

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, AMENDING FRISCO'S COMPREHENSIVE ZONING ORDINANCE NO. 00-11-01; GRANTING A SPECIFIC USE PERMIT FOR A BIG BOX RETAIL BUILDING LOCATED ON A TRACT OF LAND SITUATED IN THE MORRIS AUSTIN SURVEY, ABSTRACT NO. 5, IN THE CITY OF FRISCO, COLLIN COUNTY, TEXAS, CONTAINING 22.5 ACRES OF LAND, MORE OR LESS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE AND COMPREHENSIVE ZONING ORDINANCE NO. 00-11-01; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council"), has investigated and determined that Comprehensive Zoning Ordinance No. 00-11-01 should be amended; and pursuant to a notice being duly posted according to law, conducted a public hearing wherein a request was made by the City of Frisco, Texas (the "Applicant"), to allow a Specific Use Permit for a Big Box Retail Building on a tract of land zoned Planned Development-51-Retail. The tract of land is situated in the Morris Austin Survey, Abstract No. 5, in the City of Frisco, Collin County, Texas ("Frisco"), containing 22.5 acres of land, more or less, and being particularly described in Exhibit "A", attached hereto and incorporated herein for all purposes (the "Property"); and

WHEREAS, the City Council finds that Applicant has agreed to comply with all provisions of the ordinances of Frisco, including but not limited to Frisco's Comprehensive Zoning Ordinance No. 00-11-01 and has further agreed to comply with the additional restrictions set forth herein and the site plan, attached hereto as Exhibit "B" and incorporated herein for all purposes; and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the citizens of Frisco to grant the Specific Use Permit herein, and that such grant will not be detrimental to the public welfare, safety or health, and that the Specific Use Permit should be granted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Specific Use Permit Granted. Applicant is granted a Specific Use Permit to allow a Big Box Retail Building on the Property, which is zoned Planned Development-51-Retail with the following conditions:

1. Except as otherwise provided below, development of the Property must be in accordance with Exhibit B, which is attached to and made a part of this Ordinance.
2. The Property's current driveway providing access from Lot 1, Block A, Frisco Burger King Addition to Preston Road must be relocated by the Applicant to the southern Property line of Lot 1, Block A, Frisco Burger King Addition due to the construction of the deceleration lane on Preston Road.
3. The Applicant shall widen and reconstruct Gary Burns Drive between Tomlin Drive and Preston Road as specified in the 2009 TIA study for Hickory Center at Preston, Frisco, Texas.
4. The Applicant shall install traffic signals at the intersection of Preston Road and Hickory Street prior to issuance of the Certificate of Occupancy.
5. The detention area shall be designed as an amenity for this development as depicted on Exhibit D. Exhibit D shall be used as a reference for reviewing and approving the final design for this detention area. In conjunction with the final site plan, staff will forward its recommendation to the Planning & Zoning Commission regarding detention area compliance with Exhibit D.
6. Seven metal benches shall be placed around the detention pond.
7. Development shall comply with the facade elevations attached hereto as Exhibit E.
8. Parking spaces in excess of the minimum 1:250 (parking space:floor area ratio) shall be designed and constructed using a water-permeable parking

surface as approved by City staff, and such parking spaces shall be located adjacent to the storm sewer line located in the center of the proposed parking lot.

9. Truck deliveries shall be limited to the hours from 6 a.m. to 10 p.m. and refrigerator trucks shall be turned off within three minutes of parking.
10. The maximum size of the building shown in Exhibit B shall be limited to one hundred eighty-five thousand (185,000) square feet in area. Any size increase will require approval of a Specific Use Permit to do so.
11. So long as the Hickory Street Home Owner's Association (the "HOA"), before December 31, 2009, takes the necessary legal steps to accept the transfer of the twenty-five (25) foot wide strip of land along the western side of the Property as described below, executes any legal documents necessary to provide temporary and permanent easements for construction and wall maintenance, and allows the Applicant to connect an irrigation system for the new plantings on the western side of the masonry wall described below to the HOA's existing irrigation system, development of the Property shall deviate from Exhibit B as follows:
 - a. The western Property line shall be relocated twenty-five (25) feet to the east and the Applicant shall dedicate the twenty-five (25) foot wide strip to the HOA.
 - b. The Applicant shall construct an eight-foot-tall masonry screening wall along the new western Property line.
 - c. The Applicant shall plant a row of thirty (30) gallon Nellie R. Stevens Hollies along the west side of the masonry screening wall, to replace the red tip photinias.
 - d. The Applicant shall plant a row of trees along the west side of the screening wall per Comprehensive Zoning Ordinance requirements.
 - e. The Applicant shall install an irrigation system for the new plantings on the western side of the masonry wall described herein and such irrigation system shall be connected to the HOA's existing irrigation system.

If the HOA fails to meet its obligations as listed above before December 31, 2009, development of the Property shall be consistent with Exhibit B and No. 11(a)-(d) of this ordinance shall not be a requirement of this SUP. But, if the Applicant takes any action or inaction that solely prevents the HOA from meeting its obligations and deadline hereunder, as determined by City staff, City staff may reasonably extend the HOA's deadline until the Applicant complies with the requirements listed in this section.

The Property as a whole and the boundaries are more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes as if set forth verbatim (the "Property"). The general location of the Property is depicted on Exhibit "A-1", attached hereto. The Property shall be developed in compliance with the conditions expressly stated in the following exhibits, attached hereto as Exhibit "B Sheet 1", Exhibit "B Sheet 2", Exhibit "C", Exhibit "D", and Exhibit "E".

SECTION 3: Failure to Comply/Assignable and Transferable. Except as otherwise stated above, all terms of the Specific Use Permit shall be complied with prior to issuance of a certificate of occupancy. Failure to comply with any term or condition of this Ordinance and/or Frisco's Comprehensive Zoning Ordinance No. 00-11-01, as they exist or may be amended, will result in the Specific Use Permit being declared null and void and of no force and effect. The Specific Use Permit is issued to the entity named above and is assignable and transferable.

SECTION 4: Specific Use Permits Regulations. Upon holding a properly notified public hearing, the City Council may amend, change, or rescind a specific use permit if:

1. There is a violation and conviction of any of the provisions of this Ordinance, or any ordinance of the City of Frisco, that occurs on the Property;
2. The building, premise, or land used under this Specific Use Permit are enlarged, modified, structurally altered, or otherwise significantly changed unless a separate Specific Use Permit is granted for such enlargement, modification, structural alteration, or change;
3. Violation of any provision of the terms or conditions of this Specific Use Permit;

4. Ad valorem taxes on the Property are delinquent by more than six (6) months;
5. The Specific Use Permit was obtained by fraud or deception; or
6. As otherwise permitted by law and/or Frisco's Comprehensive Zoning Ordinance No. 00-11-01, as it exists or may be amended.

SECTION 5: Specific Use Permit Effective Date. This Specific Use Permit shall be effective from and after the effective date of this Ordinance. Upon termination of this Specific Use Permit, the Property shall cease to be used as provided herein unless another Specific Use Permit or appropriate zoning has been obtained.

SECTION 6: Unlawful Use of Premises. It shall be unlawful for any person, firm, entity or corporation to make use of the above-referenced tract of land in some manner other than as authorized by this Ordinance or other applicable Ordinances.

SECTION 7: Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or Frisco's Comprehensive Zoning Ordinance No. 00-11-01 as they exist or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding Two Thousand and No/100 Dollars (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 8: Savings/Repealing Clause. Frisco's Comprehensive Zoning Ordinance No. 00-11-01 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 9: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance

shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 10: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 18th day of August, 2009.

MAHER MASO, Mayor

ATTESTED TO AND

CORRECTLY RECORDED BY:

APPROVED AS TO FORM:

JENNY PAGE, City Secretary

Abernathy, Roeder, Boyd & Joplin, P.C.
CLAIRE E. SWANN , City Attorneys

Dates of Publication: _____, *Frisco Enterprise*

SUP09-0002
Hickory Center at Preston
Big Box



Exhibit "A"
Legal Description

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEING a tract of land of land out of the Morris Austin Survey, Abstract No. 5, in the City of Frisco, Collin County, Texas, being all of the 27.72 acre and 1.09 acre tracts of land described in deed to Allegiance Frisco, LP recorded in Collin County Clerk's File No. 20070209000191390 of the land records of Collin County, Texas, being all of the 7.83 acre tract of land described in deed to Allegiance Frisco, LP recorded in Collin County Clerk's File No. 2007020900019138 of the land records of Collin County, Texas, being all of Lot 1, Block A of Hickory Center at Preston according to the Conveyance Plat of Hickory Center at Preston thereof recorded in Cabinet 2009, Page 279 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 5/8" iron rod found with a plastic cap stamped "KHA" (hereinafter called 5/8" iron rod found) in the north right-of-way line of Hickory Street (60' ROW) for the southeast corner of said Lot 1;

THENCE with said north right-of-way line, the following courses and distances to wit:

South 89°21'30" West, a distance of 194.89 feet to a 5/8" iron rod set for the beginning of a tangent curve to the left with a radius of 880.68 feet, a central angle of 19°51'20", and a chord bearing and distance of South 79°25'50" West, 303.67 feet;

Southwesterly, with said curve, an arc distance of 305.19 feet to a 5/8" iron rod set;

South 69°30'10" West, a distance of 502.03 feet to a 1/2" iron rod found for the southeast corner of Hickory Street Village Phase 1, an addition to the City of Frisco according to the plat thereof recorded in Cabinet I, Page 99 of the Map Records of Collin County, Texas;

THENCE with the east line of said addition and the east line of Hickory Street Village Phase IV, an addition to the City of Frisco according to the plat thereof recorded in Cabinet I, Page 241 of the Map Records of Collin County, Texas, North 00°43'49" West, a distance of 1104.03 feet to an aluminum monument found for the southwest corner of a 1.4 acre tract of land described in deed to the City of Frisco recorded in Volume 2394, Page 383 of the Land Records of Collin County, Texas;

THENCE with the south line of said 1.4 acre tract, North 89°10'20" East, a distance of 45.44 feet to a 1/2" iron rod found for corner;

THENCE with the southerly most east line of said 1.4 acre tract, North 00°38'28" West, a distance of 31.20 feet to a 1/2" iron rod found for the southwest corner of a 0.927 acre

tract of land described in deed to the City of Frisco recorded in Collin County Clerk's File No. 95-0066831 of the Land Records of Collin County, Texas;

THENCE leaving the southerly most east line of said 1.4 acre tract, the following courses and distances to wit:

North 88°59'58" East, a distance of 634.62 feet to a 5/8" iron rod found for corner;

North 00°59'49" West, a distance of 39.37 feet to a 5/8" iron rod found for corner;

North 89°10'26" East, a distance of 280.12 feet to a 5/8" iron rod found for corner;

South 00°59'49" East, a distance of 152.24 feet to a 5/8" iron rod found for corner;

North 89°34'10" East, a distance of 4.84 feet to a 1/2" iron rod found for the northwest corner of Frisco Burger King Addition, an addition to the City of Frisco according to the plat thereof recorded in Cabinet J, Page 56 of the Map Records of Collin County, Texas;

THENCE with the west line of said addition, South 00°36'22" East, a distance of 146.04 feet to a 1/2" iron rod found for corner;

THENCE with the south line of said addition, North 89°36'05" East, a distance of 252.87 feet to a 5/8" iron rod set in the west right-of-way line of Preston Road (variable width ROW) for the beginning of a non-tangent curve to the left having a radius of 5789.58 feet, a central angle of 0°37'39", a chord bearing and distance of South 03°46'29" West, 63.41 feet;

THENCE with said west right-of-way line, southwesterly, with said curve, an arc distance 63.41 feet to a 5/8" iron rod set for corner;

THENCE leaving said west right-of-way line, the following courses and distances to wit:

South 89°15'08" West, a distance of 249.38 feet to a 5/8" iron rod found for corner;

South 00°59'48" East, a distance of 593.71 feet to the **POINT OF BEGINNING** and containing 978,555 square feet or 22.4646 acres of land.

Bearing system based on the Texas State Plane Coordinate System established from the Frisco Monuments and the monuments found in the north line of Hickory Street according to the plat of Hickory Center at Preston thereof recorded in Cabinet 2009, Page 279 of the Map Records of Collin County, Texas.

Exhibit “A”

Exhibit “B Sheet 1”

Exhibit “B Sheet 2”

**Exhibit “C”
Green Engineering Spaces**

**Exhibit “D”
Detention Pond**

**Exhibit “E”
Façade Elevation**